respondent in these proceedings that the said order of the Japanese Court was a final order.

The applicant's main submission is that the Japanese order being a final order is no longer valid and that he is at liberty to carry on proceedings in the said suit under the provisions of Section 44 of the Singapore Colony Order in Council 1946.

There is strong authority for the statement that judicial acts done under the control of an occupying power, when they are not of a political complexion, remain good and that all judgments given in accordance with the local law or with such regulations as the enemy was lawfully entitled to prescribe are to be respected at the end of the occupation.

It is no part of the applicant's submissions, as I understand them, that the above is not a correct expression of the relevant International Law. For the applicant, Mr. Mitra contended however that the legislature of the Colony had thought fit not to give full recognition to all acts done by the Japanese Courts and that by expressly providing by the Japanese Judgments and Civil Proceedings Ordinance No. 37 of 1946, (Section 6), that any interlocutory order made by a Japanese Court in proceedings carried on under the provisions of Section 44 of the Singapore Colony Order in Council, 1946, shall be deemed to be valid the said Legislature intended that non-interlocutory orders made by a Japanese Court in such proceedings should be of no effect. No application had been made under Section 5 of Ordinance No. 37/46 to have an order of Court substituted for the said Japanese Order. He submitted that he was entitled, therefore, to carry on proceedings under Section 44 of the above mentioned Order-in-Council.

For the persons served with the Summons, Mr. Gale contended that the Japanese Order in question was a perfectly good order made according to the law of the Colony and the practice of this Court and is therefore, in accordance with International Law, valid unless set aside. The Legislature has taken great care not to state in Ordinance 37/46 that any Japanese decree is invalid but has by Section 3 thereof made provision for setting aside or appealing against Japanese decrees. He submitted that section 6 does not apply as it is agreed that the order in question is not an interlocutory order.

Had the Legislature decided that the relevant principle of International Law was not to be followed and that final orders made by Japanese Courts should be regarded as invalid, it could and no doubt would have legislated accordingly. No such legislation has been enacted: on the contrary Ordinance No. 37/46 was enacted to make provision with regard to Japanese decrees which term includes any judgment, order or decree whatsoever given or made in any suit, action, cause or other civil matter by any Japanese Court. The Ordinance provides for the hearing of applications to appeal against or to set aside on certain grounds Japanese decrees.

I can find nothing in Section 6 of the Ordinance quoted which expressly or impliedly can affect in any way the validity of a final order made by a Japanese Court. The order in question, having been made here in accordance with the local law and forming part of the records of this Court and not having been set aside, is in my opinion, a valid order. I find therefore that suit No. 149/40 no longer exists and that no order can be made on this Summons which purports to be brought in that Suit.

Mr. Mitra also submitted that by contending that the Japanese decree was valid the respondent was "pleading" that decree and that such pleading is disallowed by the provisions of Section 7 of Ordinance No. 37/1946. In reply Mr. Gale submitted that the term "pleading" has a special meaning in Law, that he is before the Court in answer to Summons served on his clients and that he is not pleading the Japanese decree in any way contemplated by Section 7. In any case the words "or otherwise" must be construed as being *ejusdem generis* and that a defence, in which a judgment is normally pleaded, is expressly omitted from the provisions of Section 7.

Having found that the Suit terminated in 1943, it is unnecessary for me to consider here the questions whether the submissions made by the Solicitor for the persons served amount to a pleading or not and, if so, whether such pleading is barred by Section 7 of the Ordinance.

There may be certain courses open to both sides under Ordinance 37/1946 but for the reasons stated above I make no order on this Summons.

No Order.

MILLER v. MILLER.

[Orig. Civil Juris. (Murray-Aynsley, C.J. Feb. 19, 1948]
[Singapore — Divorce No. 31 of 1947]

Divorce — Animus deserendi arising after involuntary separation — Physical impossibility of return — Three year period of desertion not broken by occupation of same room if animus deserendi remains — Special circumstances.

In this case the parties were married, and lived and cohabited in Singapore. There was one child of the marriage. In January 1942, owing to the Japanese invasion, the Respondent wife and her child were evacuated to India. The Petitioner husband was interned

in Singapore. After his liberation the Petitioner rejoined his wife in Delhi. The Petitioner by reason of his internment was without money. The parties together occupied the Respondent's bed sitting room for two weeks. No marital relations took place. The Respondent asked for a separation and later for a Divorce. For a further week the parties and their infant daughter occupied a bedroom in a Hotel.

At the hearing, Counsel for the Petitioner read an affidavit of a friend of the parties who deposed as follows: — "In or about October or November 1943 when we were discussing the question of the effect of War on married couples, Mrs. Miller told me that she did not intend to continue her life with Harry Miller if he came back alive from the Internment Camp in Singapore, but that after his release she would stay with him for a couple of weeks until he recovered from the shock of internment and then would leave him." The remaining facts appear in the Judgment.

Held, (1) that the original involuntary separation was converted into one of desertion by the formation of an **animus deserendi** by the Respondent at a time when it was physically impossible for her to join the Petitioner and (2) that desertion continued notwithstanding a very near degree of proximity between the parties if the **animus deserendi** continued in the deserting spouse.

Cases referred to :—

(1) *Fitzgerald v. Fitzgerald,* L.R. 1 P. & M. 694.

(2) *Pardy v. Pardy,* (1939) P. at p. 302.

(3) *Shilston v. Shilston,* 174 L.T. 105.

(4) *Mummery v. Mummery,* 1942, P. 107.

UNDEFENDED PETITION FOR DIVORCE.

R. H. Green for the Petitioner.

Murray-Aynsley, C. J. : — This is a husband's petition for dissolution on the ground of desertion.

The facts are peculiar. The parties are domiciled in the Colony. They lived and co-habited there until at the time of the Japanese invasion the respondent was evacuated to India. The petitioner remained behind and was interned. On release from internment the petitioner proceeded to India. He joined his wife in New Delhi, where he had arrived almost penniless and for some time shared the bed-sitting room which the respondent occupied. He soon realised that he was not wanted. The respondent refused marital relations and proposed a separation. The petitioner subsequently found that she had formed an attachment with some one else. Later the petitioner left and the parties have remained separated. There is no doubt that since that time the respondent has deserted the petitioner. However, in order to succeed the petitioner has to establish desertion at least as far back as September, 1944. In order to do this he has made use of the evidence of a Mrs. Shister, which was given in the form of an affidavit. This evidence established that by October, 1943, the respondent had formed an intention to desert the petitioner.

It being conceded that the act of the respondent in leaving Singapore did not constitute desertion, the petitioner must show that the state of involuntary separation could be converted into one of desertion by the formation of an *animus deserendi* by the respondent at a time when it was physically impossible for the respondent to join the petitioner. If the petitioner can get over this difficulty, he has to show that the form of co-habitation that took place in New Delhi did not put an end to the state of desertion.

As regards the first point, the more old-fashioned view, of which the judgment of Lord Penzance in *Fitzgerald v. Fitzgerald*[1], is an instance, would have been a complete answer. The modern view is more favourable to the contention of the petitioner. In particular Sir Wilfred Greene, as he then was, enunciates a proposition, which, if it is accepted, completely supports the case for the petitioner.

> The first question which arises is whether or not it is possible in law for a separation which began by being consensual to acquire the character of desertion without a previous resumption of cohabitation. Looking at this question on principle and apart from authority, I can see no reason why the answer should not be in the affirmative. The word 'desertion' may describe an act or it may describe a state. For the act of desertion both the **factum** of separation and the **animus deserendi** are required. A **de facto** separation may take place without there being an **animus deserendi**, but, if that animus supervenes, desertion will begin from that moment, unless, of course, there is consent by the other spouse. Thus a husband who leaves his wife for a business voyage may, nevertheless, become guilty of desertion without the necessity of a previous return. All that is required to establish desertion in such a case is the presence of a supervening **animus deserendi** (a matter to be inferred from the words and conduct of the deserting spouse), a continuation of the **de facto** separation, and the absence of consent by the other spouse. **Pardy** v. **Pardy**[2].

I think that that passage of a judgment which should be considered in full fits entirely the facts of the present case.

There remains to be considered the other point, namely, the effect of what occurred between the parties in New Delhi in 1945. Cases such as *Shilston v. Shilston*[3], show that desertion can exist notwithstanding a very near degree of proximity between the parties. Even, as in *Mummery v. Mummery*[4], actual intercourse can take place without putting an end to the state of desertion; that is to say, if the *animus deserendi* continues.

In view of the evidence in this case, and in view of the very abnormal circumstances that prevailed, I have no difficulty in finding as a fact that the state of desertion was not interrupted.

Decree Nisi Granted.